

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Ronald & Teresa Holmgren,**  
Petitioners-Appellants,

v.

**Polk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 10-77-0185**  
**Parcel No. 241/01050-005-000**

On April 7, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Ronald and Teresa Holmgren, requested a hearing and submitted evidence in support of their petition. They were self-represented. The Board of Review designated Assistant County Attorney Peter Blink as its legal representative. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Ronald and Teresa Holmgren, owners of property known as OUT LOT Z OF WINDY HILL PLAT1 in Johnston, Iowa, appeal from the Polk County Board of Review decision reassessing their property. According to the property record card, the subject property is a 2.491 acre unimproved lot.

The real estate was classified as residential on the initial assessment of January 1, 2010, and valued at \$35,800. The 2009 assessed value was \$7,100, and it was reassessed in 2010, at least in part due to the expiration of the platting law which essentially “freezes” the assessed value of a lot for three years or until the lot is actually developed, whichever occurs first. Iowa Code § 441.72.

The Holmgrens protested to the Board of Review on the ground that there had been a change in value since the last reassessment year under Iowa Code section 441.37(1) and section 441.35. We note

that the appellant's claim of downward change in value in an assessment year is akin to a challenge on market value. *Dedham Coop. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App.) (unpublished). The Board of Review appraiser analysis reported the land looked buildable with some dirt work, because the owners owned other adjacent land and the property backed up to a new development. The Board of Review granted the protest, in part, concluding, "There has been a change in value since the last reassessment." The property record card indicates the lot was given a -20% vacancy factor at the time of the initial assessment. The Board of Review reduced the land value by an additional -5% adjustment for a total assessment of \$34,000.

The Holmgrens filed their appeal with this Board asserting the same ground. As previously noted, we consider their claim to be one of market value. They claimed the land was unsalable and unusable due to two permanent silt ponds that emptied onto the property resulting in six to eighteen inches of silt discharged onto the land in the past two years. They claimed the actual value was \$5000.

Teresa Holmgren testified the land had been in her family for 125 years. She purchased ten acres from her father, and her sister purchased four acres. The land was subdivided to provide seven building lots for the family members. Two easements were added to the subject property in 2009 for access to the lots. She reported that under the City of Johnston regulations, they are treated as developers and would have to pay for a road to access the property. Holmgren indicated that a Class II stream runs through the middle of the property. Holmgren testified the land had been wooded. In 2005 when the City of Johnston directed water across that property, it created a 12-foot to 15-foot wide and relatively deep gully and caused silt to overflow onto the surrounding land. She reported that a bid from Iowa Outdoor estimated a \$90,000 cost to move the stream back from the center of the property. She is uncertain of the additional cost required for road construction.

The Holmgrens submitted two letters prepared by David R. Wilwerding, Johnson Community Development Director, on June 11, 2010, and October 5, 2010. The second letter was more detailed.

It designated the land as currently unbuildable because structures are not permitted on platted outlots under subdivision regulations. He explained that in order for the property to be developed or built upon it would require re-platting; extension of the public street, Woodland Drive; and extension of public utilities. Wilwerding also reported that the platting would need to address and accommodate the existing overland flowage drainage that occurs through Outlot Z flowing west to east. He reported the existence of wetlands under the US Fish & Wildlife Service classification required additional study to determine if this prohibits development. And existing drainage that as a Class II stream, requires a minimum buffer of twenty feet on either side of the stream channel to allow access to the drainage way. Wilwerding concluded the parcel's encumbrances make development extremely difficult and the property is possibly unbuildable. Further until all stops set forth in his letters are taken it is unbuildable in its current state. Since the Board of Review appraiser analysis was completed before Holmgrens' May 20, 2010, oral hearing, the appraiser did not have the benefit of Wilwerding's letter concerning the parcel.

According to the *Iowa Real Property Appraisal Manual*, p. 2-14, there are several factors which can decrease land value for which adequate adjustment should be made, such as topography. And the appraiser must use experience and common sense to determine the amount of effect negative characteristics have on each individual lot. *Id.* The Manual states, "If you have five good lots on the street and the next lot is a cliff, ravine, swamp or too small to build on according to zoning you should be sure you are making an adjustment."

Following the hearing, this Board requested the Board of Review provide the assessor's cost report for the subject property and the cost report percentage adjustment for unbuildable land. It, through counsel, responded stating that if the assessor determined the lot was unbuildable it would be adjusted between -1% and -80%.

Reviewing all the evidence, we find the preponderance of the evidence supports Holmgrens' contention the property is over-assessed. We find Teresa Holmgren a credible and informed witness. No witnesses or exhibits were offered by the Board of Review to refute her testimony and evidence. The letters from Wilwerding provided the most detailed and persuasive evidence of the condition of the property rendering it, in his opinion, unbuildable at this time. The parcel already was discounted by 20% for a vacancy factor at the time of the initial assessment and the Board of Review minimally discounted it an additional 5% for a topography correction. Based on the creek, flooding, erosion, loss of value, and restrictions placed on the land, we believe an additional -20% adjustment is warranted. Accordingly, we modify the topography adjustment to -25% to adjust for the current condition of the lot, and the significant difficulties and uncertainty of its future development. This reduces the assessment to \$27,200 as of January 1, 2010.

### *Conclusion of Law*

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

As previously noted, we consider only the claim of over-assessment. In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Holmgrens presented persuasive evidence to support this claim. Although the certified record contained the Board of Review appraiser's opinion that the property looked buildable, no evidence was presented by the Board of Review to verify this assumption. The evidence provided by Holmgrens from the Johnston Community Development Director indicated the property is unbuildable in its current state and faces extreme difficulty for future development.

Viewing the record as a whole, we determine the preponderance of the evidence supports Holmgrens' claim of over-assessment. Therefore, we modify the Holmgrens' property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2010, is \$27,200.

THE APPEAL BOARD ORDERS that the January 1, 2010, assessment as determined by the Polk County Board of Review is modified as set forth herein.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly.

Dated this 20 day of June 2011.

Jacqueline Rypma  
Jacqueline Rypma, Presiding Officer

Karen Oberman  
Karen Oberman, Board Member

Richard Stradley  
Richard Stradley, Board Chair

Copies to:  
Ronald & Teresa Holmgren  
9304 NW 62nd Avenue  
Johnston, IA 50131-1729  
APPELLANTS

Peter Blink  
Assistant Polk County Attorney  
111 Court Avenue, Room 340  
Des Moines, IA 50309-2218  
ATTORNEY FOR APPELLEE

Jamie Fitzgerald  
Polk County Auditor  
111 Court Avenue  
Des Moines, IA 50309  
AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>6-20</u> , 201 <u>1</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature	<u>[Signature]</u>